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**Law**

**FOREIGN CRIMINAL JURISDICTION**

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This instruction implements AFR 51-7, *International Law*, and Department of Defense (DoD) Directive 5525.1, *Status of Forces Policies and Information*, August 7, 1979, with Change 1. It outlines the pretrial custody, international hold, and reassignment or transfer procedures for Air Force personnel, including military members, civilian employees, and dependents, being held on criminal charges under foreign law. It also explains how a Military Legal Advisor (MLA) is appointed and the scope of an MLA's responsibilities in foreign court proceedings. For related information, see AFR 110-12, *Status of Forces Policies, Procedures, and Information (Joint Departmental Publication)*.

**SUMMARY OF REVISIONS**

This is the initial publication of AFI 51-703, revising AFR 110-25 and AFR 110-28. It prohibits a staff judge advocate from functioning as a Military Legal Advisor.

**Section A—Pretrial Custody in Foreign Court Cases**

**1. Releasing Personnel From Foreign Custody.** The Air Force will seek the release from foreign custody of any Air Force personnel charged with criminal offenses under foreign laws.

1.1. If an international agreement between the United States and the host country provides for the United States to exercise pretrial custody, do not post bail bonds using US funds before getting approval from HQ USAF International and Operations Law Division (HQ USAF/JAI).

**2. Transferring Personnel.** Air Force authorities will not transfer, curtail, or reassign Air Force personnel charged with criminal offenses in a foreign court until final disposition of the charges except in accordance with that court's approved procedures or with approval of HQ USAF/JAI and either the designated commanding officer or the country representative.

**3. Attending Court Hearings.** Air Force personnel facing foreign criminal charges are personally responsible for attending all scheduled court hearings. When these individuals are in US custody, commanders will make them available at all hearings as the court requests.

**4. International Hold Procedures.** Air Force commanders will establish international hold procedures to ensure that Air Force personnel subject to foreign criminal jurisdiction do not depart the country before the final disposition of charges, except in accordance with paragraph 2.

4.1. Air Force authorities will place on international hold all individuals under active criminal investigation or formally charged for possible violation of host country law. Air Force authorities may also place on international hold any individuals who have been designated as witnesses in pending criminal investigations or prosecutions.

4.2. Air Force authorities will adhere to the following minimum international hold procedures in cases in which the Air Force maintains or accepts custody of an individual allegedly involved in a foreign crime or a foreign court case. This instruction also covers cases in which the individual has posted bail from personal funds.

**4.2.1. Military Members.** Commanders will order military members in writing not to depart the host country until properly released from international hold. Military members will acknowledge these orders in writing.

**4.2.2. Civilian Employees.** Commanders will ask their civilian employees to acknowledge in writing that they will not be transferred, reassigned, or allowed to use any type of US-funded transportation to leave the host country until they are properly released.

**4.2.3. Family Members.** Commanders will ask family members, age 16 or over, of military members or civilian employees to acknowledge in writing that they will not be transferred from the host country on military orders or be given any kind of US-funded transportation until they are properly released from international hold. Family member's sponsors will also be asked to acknowledge the statement. For family members under the age of 16, ask only the sponsors to acknowledge the statement.

## ***Section B—Military Legal Advisors (MLA)***

**5. Notifying Personnel.** Commanders make sure that all Air Force military members facing criminal charges in foreign courts are promptly notified of their right to the services of an MLA. Commanders must notify personnel when charges are filed or a court summons is issued. In cases involving no significant risk of confinement, such as minor traffic offenses, members can be notified by mail.

**6. Appointing an MLA.** If the member requests an MLA, the local staff judge advocate (SJA) appoints one as soon as possible. The SJA cannot serve as an MLA under any circumstances.

**7. Qualifications for MLA Appointments.** Only Air Force judge advocates may serve as MLAs. Judge advocates assigned as Area Defense Counsel (ADC) may be appointed MLAs if approved by the Chief Circuit Defense Counsel.

7.1. When neither an ADC nor another judge advocate is available, the SJA determines how a member requesting an MLA will be advised. In serious cases, such as those likely to prompt administrative

discharge action or confinement, the SJA may appoint temporary duty MLAs. In minor cases, including those with no substantial likelihood of administrative discharge action or confinement, the SJA may arrange for advice by telephone or another sufficient method. The SJA will not appoint as MLA any person who has acted, or is expected to act, as trial counsel or trial observer in a case involving the member.

**8. Duties of the MLA.** The MLA provides legal advice to the member on all US-related matters arising out of criminal charges pending in a foreign court, including:

- The client's military status and any administrative actions that may be taken by or against that client.
- The rights guaranteed to the accused in applicable treaties or other international agreements between the United States and the country concerned.
- DoD policies on personnel subject to foreign criminal jurisdiction.

8.1. The lawyer-client privilege applies to all communications between MLAs and their Air Force clients.

**9. Role of the MLA in Foreign Court Proceedings.** The MLA may participate in pretrial discussions, facilitate communications between the client's foreign counsel and military authorities, and may also help in obtaining documents and witnesses for the defense. The MLA must never seek to supplant the legal advice of the client's foreign counsel regarding the foreign proceeding.

**10.** The MLA may communicate with and advocate the client's interests to the foreign counsel, the trial observer, the claims officer, the SJA, the client's commander, and other US officials. However, the MLA must not make any official representations to foreign authorities without obtaining permission from the SJA.

**11.** The MLA should not attend foreign trials or hearings unless a member's right to adequate legal counsel would otherwise be deprived in a particular case. If the MLA attends he or she should appear as an unofficial spectator. The MLA may not sit at the counsel table, present pleadings or arguments, or otherwise participate in the court proceedings. The MLA may make suggestions to the client's foreign counsel who remains responsible for the defense of the foreign case.

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The Judge Advocate General